IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 22 of 2007

Date of decision 10 .5.2007

The Commissioner, Central Excise Commissionerate, Rishi Nagar, Ludhiana

.. Appellant

Versus

M/s TR Industries and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. Gurpreet Singh, Advocate for the Appellant

M.M.Kumar, J.

In this appeal filed under Section 35 G of the Central Excise Act,1944, the revenue has challenged the order dated 15.6.2006 (Annexure A/3) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi claiming that the following substantial question of law would arise for our determination:

> " Whether equal penalty under Section 11 AC is not imposable on the assessee merely on the ground that the duty has been deposited before the issue of show cause notice?"

A perusal of the findings recorded by the Commissioner (Appeals) would show that shortage of goods in the stock could not be considered as clandestine removal unless supported by any other corroborative evidence. The view of the Commissioner (Appeals) read as

under:

> " I have carefully examined the case records including the Appellants submission made in writing and at the time of personal hearing and observe that the duty calculated on the shortage of the final products was deposited on the spot before issue of Show Cause notice, no interest and penalty is imposable as held by Tribunal in the case of Rasthriya Ispat Nigam Ltd., v. CCE 2003 (161) ELT 285 (Tri.) and upheld by the Supreme Court reported as 2004(163)ELT A.53. The Larger Bench of CESTAT has also followed the said decision in the case of CCE v. Machino Montell (P) Ltd., 2004(62) RLT 709. Moreover, no show cause notice is required under Section 11 A (2B) Order-in-original imposition the interest and both type penalty is, therefore, set aside and amount of duty deposited is confirmed. The shortage of the final goods in the stock cannot be considered as clandestine removal unless supported by any other corroborative evidence. Hence penalty not imposable on the company and the Director/ Partner."

On further appeal, the afore-mentioned opinion of the Commissioner has been accepted by the Tribunal.

In view of the above, it is not possible for us to accept that there was any omission on the part of the assessee to intentionally evade the payment of duty. The finding with regard to intention to evade payment of duty since is a question of fact and therefore no intereference of this Court would be called for. Even otherwise the matter has been settled in the case of CCE v. M/s Machino Montel (P) Ltd. 2004 (62) RLT 709.

The appeal is without any merit and the same is accordingly dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

10 .5.2007
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